

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of) CC Docket No. 95-116
Telephone Number Portability) RM 8535

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

The National Exchange Carrier Association, Inc. (NECA) hereby replies to oppositions and comments regarding Petitions for Clarification and/or Reconsideration of the Commission's *Third Report and Order* in the above captioned matter.¹

The Commission Should Grant NECA's Petition Without Delay

In its Petition for Reconsideration, NECA seeks immediate clarification as to how incumbent local exchange carriers (ILECs) who do not have local number portability (LNP)-capable switches may recover their LNP-related costs.² NECA recommends in its petition that, for an interim period pending further study of cost recovery issues for small ROR carriers, the Commission clarify that non-LNP ILECs continue to book and recover their LNP-related costs

¹ Telephone Number Portability, *Third Report and Order*, FCC 98-82, CC Docket No. 95-116, RM 8535 (rel. May 12, 1998) (*Order*).

² As NECA explained in its petition, the *Order* requires all telecommunications providers, including small rate of return (ROR) ILECs, to contribute to the cost of the seven regional Number Portability Administration Centers (NPACs). *Order* at ¶¶ 87, 113. However, telecommunications providers may only recover these costs (through end-user charges beginning February 1, 1999) if they provide service from a LNP-capable switch. *Id* at ¶ 143. Currently, few of NECA's traffic sensitive (TS) pool members have LNP-capable switches. The *Order* also allows ILECs to recover from N-1 carriers, via charges separate from the end-user charge, their carrier-specific costs directly related to providing prearranged and default query services. *Id* at ¶ 147. In most instances, larger LECs would be providing these database query services to smaller, ROR companies and assessing charges for this service. *See* NECA Petition at 3-4. Yet, the *Order* does not specify how carriers that must purchase such services should recover their costs.

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through normal accounting and separations processes.³

Several parties filed petitions for the same or similar relief, or supported NECA's recommendation. USTA, for example, makes the same recommendation in its petition, advocating that ILECs recover their LNP costs "in the same manner as other network costs," using "regular accounting and separations processes . . . until the Commission further considers the issue."⁴ USTA also states that the "proportional cost for participation in the regional [databases] for those companies excluded from present cost recovery rules is substantial in many cases and cannot be overlooked."⁵

Clarification of how non-LNP carriers may recover their LNP costs is also sought by NTCA, the Oklahoma Rural Telephone Coalition and Texas Statewide Telephone Cooperative, and is supported by OPASTCO. NTCA shows how the Commission's requirements for recovering costs of the regional databases prevents non-LNP ILECs from recovering such costs, which NTCA states is a "nonsensical and confiscatory" result. OPASTCO supports NECA's, USTA's and NTCA's petitions, "urg[ing] the Commission to correct this apparent oversight" in

³ For example, carrier-specific LNP data base query costs incurred by non-LNP-capable ILECs could be treated in the same manner as other data base query charges, such as those associated with calls to "800" and "900" numbers. That is, these costs would be included in central office expense accounts and allocated between the jurisdictions on the same basis as central office investment, as specified in Parts 32 and 36 of the Commission's rules. See 800 Data Base Access Tariffs and the 800 Service Management System Tariff, CC Docket No. 93-129, *Report and Order*, 11 FCC Rcd 15227, 15257-69 (1996). Alternatively, to preserve the interstate nature of these costs, the Commission could (pending further study) direct ROR companies to directly assign them to the interstate jurisdiction, for assignment to the local switching element pursuant to Part 69 of the Commission's rules.

⁴ USTA Petition at 5-6.

⁵ *Id* at 7.

its LNP cost recovery rules.⁶

Only two parties appear to oppose NECA's recommendation. MCI and AT&T indicate that the need for competitive neutrality prevents the recovery of LNP costs through access charges.⁷ These parties appear to assert that to the extent LNP costs flow through normal accounting and separations processes during NECA's suggested interim period, some of those costs would be recovered via access charges during that time.

NECA's recommendation is completely consistent with the Act's requirement that LNP costs be recovered in a "competitively-neutral" manner. In the rural areas served by small carriers not required to offer LNP, there is no competition to be biased and there would be no unfair burden on interexchange carriers or other classes of customers.⁸ The IXC's competitive neutrality concern is thus simply not applicable to the situation that NECA's pooling members face. As is evident from the IXC's comments, which mostly cite to the Commission's *Order*, the Commission's concerns with competitive neutrality are focused on the competition developing in the territories of the Bell operating companies and other price cap carriers. However, the vast majority of NECA's pooling members do not face any competitive developments, now or in the near future.

⁶ OPASTCO Supporting Comments at 3.

⁷ See MCI Response at 4, 5-6; AT&T Opposition at 14.

⁸ Since NECA's recommended cost recovery approach would be applied only in areas where there have been no *bona fide* requests for local number portability, there should be no concerns regarding potential adverse impacts on any competitors for local service provisioning. Moreover, under the accounting method recommended herein, LNP-related costs would be treated in the same manner as other, similar network costs. Recognizing, however, that the Commission may eventually develop alternative means for non-LNP carriers to recover these costs, NECA suggested in its petition that carriers maintain subsidiary LNP records so that these costs may be discretely identified.

While MCI also acknowledges that small and rural (non-LNP) LECs should be permitted to recover their LNP-related costs, it states that they should do so through end user charges, not access charges.⁹ However, the Commission has stated, and NECA agrees, that “recovery from end users should be designed so that end users generally receive the charges only when and where they are reasonably able to begin receiving the direct benefits of long-term number portability.”¹⁰ The vast majority of NECA’s pooling members serve end users who do not receive the direct benefits of long-term number portability. Therefore, it would be unfair, and would make no sense, to require these end users to pay this new charge in areas that are not served by competitive LECs. It would make even less sense to force ILECs to upgrade their switches, at significant expense, to offer permanent LNP absent any *bona fide* request from a competitor.

NECA’s pooling members need immediate relief to account for the LNP costs that many of them have already begun to incur. As USTA states “[t]o deny the relief requested . . . would be to preclude ILECs from recovering legitimate costs they incur in providing and administering number portability in conformance with the requirements of the Act.”¹¹ NECA’s recommendation, supported by the record, is meant only for an interim period and the Commission has authority to allow implementation of such a recommendation. Moreover, as discussed above, NECA’s recommendation is completely consistent with the Act’s requirement that LNP costs be recovered in a competitively-neutral manner.

⁹ MCI Response at 3; *see also id* at 4-8.

¹⁰ *Order* at ¶ 143.

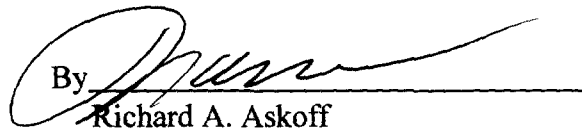
¹¹ USTA Comments at 3.

Conclusion

Immediate clarification is needed with respect to how ILECs who do not have LNP-capable switches may recover their LNP-related costs. As discussed above, the Commission should not require ROR carriers that do not offer LNP to impose end user charges, which would go against Commission policy and would be unfair to end users not directly benefiting from LNP. Rather, for an interim period, as the record supports, the Commission should clarify that these carriers may include LNP-related costs in their regulated Part 32 accounts, subject to subsidiary record keeping requirements, and that they may apply normal Part 36 separations procedures and Part 69 cost recovery methods. This treatment would continue pending resolution of specific LNP cost recovery issues relevant to small, ROR carriers, as identified in NECA's petition.

Respectfully submitted,

NATIONAL EXCHANGE
CARRIER ASSOCIATION, Inc.

By 
Richard A. Askoff
Perry S. Goldschein

Its Attorneys

September 14, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served this 14th day of September, 1998, by hand delivery or by mailing copies United States Mail, first class postage paid, to the persons listed below.

By: _____
Yolanda Sly

Magalie Roman Salas*
Office of the Secretary
Federal Communications Commission
1919 N Street, NW, Room 222
Washington, D.C. 20554
(Original and 11 copies)

Neil Fried*
Competitive Pricing Division
Common Carrier Bureau
1919 M Street, N.W.
Washington, D.C. 20554

L. Marie Guillory
Jill Canfield
National Telephone Cooperative
Association
2626 Pennsylvania Avenue, N.W.
Washington, DC 20037

Lawrence E. Sarjeant
Linda Kent
Keith Townsend
John W. Hunter
United States Telephone Association
1401 H Street, N.W., Suite 600
Washington, DC 20005

John N. Rose
Stephen Pastorkovich
Organization for the Promotion and
Advancement of Small Telecommunications
Companies
21 Dupont Circle, N.W., Suite 700
Washington, DC 20036

James H. Brolin, Jr.

Mark Rosenblum
Roy E. Hoffinger
AT&T Corp.
295 North Maple Avenue, Room 3247H3
Basking Ridge, NJ 07920

John M. Goodman
Bell Atlantic
13001 I Street, N.W.
Washington, DC 20005

Glenn B. Manishin
Michael D. Specht
Lisa N. Anderson
Blumenfeld & Cohen-Technology Law
Group
1615 M Street, N.W., Suite 700
Washington, DC 20036

Mary De Luca
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Robert M. Lynch
Durward D. Dupre
Hope Thurrott
SBC Communications, Inc.
One Bell Plaza, Room 3023
Dallas, Texas 75202

Cheryl A. Tritt
James A. Casey
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006-1888
(Counsel for Lockheed Martin IMS)

Raymond G. Bender, Jr.
J. G. Harrington
Victoria A. Schlesinger
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036
(Attorneys for Vanguard Cellular Systems,
Inc.)

* Hand Delivery

Christopher J. Wilson
Frost & Jacobs LLP
2500 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202

Thomas E. Taylor
Cincinnati Bell Telephone Company
201 East Fourth Street
Cincinnati, Ohio 45201

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
16201 I Street, N.W., Suite 701
Washington, DC 20006
(Attorneys for Telecommunications
Resellers Association)

M. Robert Sutherland
Theodore R. Kingsley
Bellsouth Corporation
Suite 1700
1155 Peachtree Street, NE
Atlanta, GA 30309-3610

Jeffrey L. Sheldon
Thomas E. Goode
UTC, The Telecommunications Association
1140 Connecticut Avenue, N.W., Suite 1140
Washington, DC 20036

International Transcription Services*
12312 20th Street, N.W.
Washington, D.C. 20037